

Message Text

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DRAFTED BY TREAS:OS:MSFEINBERG
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-----260228Z 043185 /70
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FM SECSTATE WASHDC
TO AMEMBASSY NAIROBI

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E.O. 11652:GDS

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SUBJECT: INCOME TAX TREATY DISCUSSIONS

1. TREASURY DEL. VISITED NAIROBI JANUARY 17-19, 1977, TO
CONTINUE DISCUSSIONS ON TAX TREATY. U.S. DEL. HAD ASSUMED
FROM PRIOR CORRESPONDENCE, THAT KENYA SOUGHT U.S. AGREE-
MENT ON SEVERAL RELATIVELY MINOR CHANGES IN DRAFT INITIALED
IN 1973, WHICH U.S. PREPARED TO SIGN, WITH MINOR 1975
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AMENDMENTS.

2. KENYA DEL. IMMEDIATELY MADE CLEAR THAT NEW KENYA
PERSONNEL FOUND FORMAT OF 1973 DRAFT UNSATISFACTORY AND
INSISTED THAT NEW KENYA MODEL (BASED ROUGHLY ON OECD MODEL)
BE SUBSTITUTED, BUT INCLUDING U.S. CONCESSIONS AGREED TO
IN 1973 DRAFT. IN ADDITION, THE NEW KENYA DRAFT SOUGHT TO
FURTHER EXPAND SOME OF THESE CONCESSIONS.

3. U.S. REPLIED THAT THOUGH STRONG FEELING EXISTS IN
USG THAT U.S. CONCESSIONS IN 1973 DRAFT GO TOO FAR
(PARTICULARLY RE MANAGEMENT FEES) U.S. WILLING TO SIGN WITH
MINOR AMENDMENTS, ON BASIS OF PRIOR AGREEMENT TO DO SO, AND
PUSH FOR SENATE RATIFICATION. HOWEVER, IF MAJOR CHANGES
MADE, SUCH AS ADOPTION OF KENYA DRAFT, NEW ADMINISTRATION
OFFICIALS WOULD HAVE TO REVIEW, AND STRONG LIKELIHOOD

EXISTS THAT MANY OF 1973 CONCESSIONS IN CONTEXT OF NEW
DRAFT WOULD NOT BE APPROVED.

4. KENYA ADAMANT THAT 1973 DRAFT UNACCEPTABLE. IT WAS
AGREED THAT 1973 DRAFT WOULD BE SCRAPPED AND NEGOTIATIONS
WOULD BEGIN ANEW BASED JOINTLY ON KENYA MODEL AND CURRENT
U.S. MODEL.

5. U.S. DEL. COMPARED 2 MODELS AND POINTED OUT MAJOR
DIFFERENCES WHICH WOULD REQUIRE HARD BARGAINING AT FUTURE
SESSIONS. MOST IMPORTANT OF THESE ARE TREATMENT OF
MANAGEMENT FEES, CAPITAL GAINS, WITHHOLDING RATES ON
DIVIDENDS, INTEREST AND ROYALTIES AND DEFINITIONS OF
BUSINESS PROFITS AND CORPORATE RESIDENCE.

6. DETAILED ARTICLE-BY-ARTICLE REVIEW BEGUN, GETTING
ABOUT HALF WAY THROUGH TREATY. SOME LANGUAGE AGREED AND
MANY ISSUES DEFERRED TO FUTURE DISCUSSIONS.

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7. DELS. AGREED TO EXCHANGE DRAFTS SHOWING THEIR
UNDERSTANDINGS, OF WHAT WAS AGREED AT THIS SESSION. WILL
ENDEAVOR TO SCHEDULE ANOTHER ROUND BY MID-YEAR IF, AFTER
DISCUSSIONS OF POSITIONS ON DIFFICULT ISSUES WITH
PRINCIPALS OF THE TWO SIDES, BOTH SIDES FEEL CONTINUATION
OF DISCUSSIONS WOULD BE FRUITFUL.
VANCE

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